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February 12, 2002

BY HAND

William Caton, Acting Secretary
Federal Communications Commission
445 Twelfth Street, S.W. - Suite TW-A325
Washington, D.C. 20554

Re: *Written Ex Parte Presentation*
In the Matter of Performance Measurements and Standards for Interstate
Special Access Services, CC Docket No. 01-321

Dear Mr. Caton:

On February 12, 2002, the Joint Competitive Industry Group submitted a written *ex parte* presentation to Chairman Powell, urging the Commission to adopt an enforcement plan providing remedies for poor or discriminatory special access provisioning and maintenance by Tier 1/Class A incumbent local exchange carriers.

Pursuant to section 1.1206(b)(1) of the Commission's rules, 47 C.F.R. § 1.1206(b)(1), an original and one copy of this letter and attachments are being provided to you for inclusion in the public record of the above-referenced proceeding.

Sincerely,

A. Richard Metzger, Jr.

Attachments

cc: Chairman Powell (w/o attachments)

February 12, 2002

The Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 Twelfth Street, S.W., Suite TW-A325
Washington, D.C. 20554

Re: Joint Competitive Industry Group Proposal Regarding
Essential Elements of a Special Access Provisioning Enforcement Plan

Dear Chairman Powell:

On January 22, 2002, the undersigned competitive telecommunications carriers, trade associations and the eCommerce & Telecommunications Users Group (eTUG) (the "Joint Competitive Industry Group") wrote to you, urging that the Commission adopt performance measures, performance standards, and reporting requirements to govern the provision of special access services by incumbent local exchange carriers (LECs). The comments filed on January 22, 2002 demonstrate that facilities-based competitive carriers rely on special access services provided by incumbent LECs to offer the high bandwidth services vital to business customers, and that these "last mile" links are critical to the development of facilities-based competition for local services. The comments also provide overwhelming support for adoption of the measures, standards and reporting requirements proposed by the Joint Competitive Industry Group, applicable to the provision of all interstate special access services by Tier 1/Class A incumbent LECs, including those services provided to the incumbent LECs' interexchange affiliates and retail customers.

The measures, standards and reporting requirements proposed by the Joint Competitive Industry Group are likely to induce better performance by incumbent LECs in the ordering, provisioning, maintenance, and repair of special access services. Requiring incumbent LECs to report on their performance to their affiliates, competitors and retail customers also will deter discrimination, as well as allowing the Commission more easily to assess the validity of allegations of unreasonable discrimination against competitors or other customers.

If the reporting requirements reveal that any incumbent LEC is engaging in unjust or unreasonable practices, or unreasonable discrimination, in violation of Sections 201 and 202 of the Communications Act, 47 U.S.C. §§ 201-202, the Commission should be prepared to take swift, effective and certain enforcement action, sufficient to deter anti-competitive behavior on the part of the incumbent LECs. To this end, the Joint Competitive Industry Group offers the attached Essential Elements of a Special Access Provisioning Enforcement Plan (Attachment A), a unified competitive industry and user group view regarding remedies for poor or discriminatory special access provisioning.

The Joint Competitive Industry Group urges the Commission to adopt the Group's proposal regarding enforcement, as well as its proposed performance metrics and installation intervals.

Sincerely,

The Joint Competitive Industry Group

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Federal Government Affairs Vice President
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Kelsi Reeves
Vice President – Federal Government
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Rebecca H. Sommi
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**ECOMMERCE & Telecommunications Users
Group**

Jake E. Jennings
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NewSouth Communications

Chairman Powell
February 12, 2002
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Attachment

cc: Commissioner Abernathy
Commissioner Copps
Commissioner Martin
Dorothy Attwood
Jeffrey Carlisle
Michelle Carey
Uzoma Onyeije
William Caton

ATTACHMENT A

Joint Competitive Industry Group Proposal

Essential Elements of a Special Access Provisioning Enforcement Plan

General

1. Remedies should include both payments to special access customers of the incumbent local exchange carriers (LECs) and forfeitures paid to the United States Treasury
2. Penalties must be of a magnitude sufficient to deter anti-competitive behavior
3. Penalties should increase with the magnitude of the performance failure
4. Penalties should increase for repeated performance failure
5. The Commission should state that any remedies specific to special access provisioning are in addition to the normal complaint process and any private remedies that customers may have

Payments to Customers of Incumbent LECs

6. Customers of incumbent LECs should be able to exercise any or all of the following options with respect to payments to customers
 - a. Self-executing payments to customers, consistent with the Commission's authority
 - b. Seek damages by filing a complaint at the FCC or in district court. The Commission should establish a streamlined process for complaints alleging that an incumbent LEC has failed to comply with the special access performance standards or parity requirements.

Forfeitures

7. The Commission should establish a standard methodology for calculating proposed forfeitures. Forfeiture amounts should be sufficiently high to serve as a deterrent to anti-competitive behavior, rather than simply a cost of doing business
8. The Commission should establish a streamlined process for imposing forfeitures

Non-monetary penalties

9. For significant abuses of the performance requirements, the Commission should establish non-monetary penalties, such as suspension of Section 271 or pricing flexibility authority, and injunctive relief requiring the incumbent LEC to improve its performance

Audits

10. Each incumbent LEC should be required to undergo an annual independent audit of its performance reporting, the auditor to be chosen by the FCC, but paid by the incumbent LEC
11. Competitive carriers, at their option, should have the right to audit the incumbent LECs' performance reports. The requesting carrier would pay for the audit, unless the audit reveals inaccuracies in the incumbent LEC's report, in which case the incumbent LEC would pay for the audit

Special Task Force

12. The Commission should establish a special enforcement team to focus on special access performance, similar to the BA-NY anti-backsliding team